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ABSTRACT

The juvenile justice system is complicated and can seem overwhelming. This handbook is designed to give some basic information to youths as well as parents, grandparents, foster parents, guardians, and other family members or friends of children who have been or may be in trouble with the law. This handbook is written to defendants in juvenile court, but with special tips for parents throughout the text and also a special section just for parental issues. It is hoped that this book will help juveniles become more aware of the their rights in the Texas juvenile justice system, as well as their options if they are in trouble with the law. (GCP)

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# NAVIGATING THE JUVENILE JUSTICE SYSTEM:

## A Handbook for Juveniles and Their Families

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HOGG FOUNDATION FOR MENTAL HEALTH

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# NAVIGATING THE JUVENILE JUSTICE SYSTEM:

## A HANDBOOK FOR JUVENILES AND THEIR FAMILIES

Created by Texas Appleseed
and the Southwest Regional Juvenile Defender Center at the University of Houston Law Center
with generous support from the Hogg Foundation for Mental Health

**September 2002**

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Texas Appleseed's mission is to promote justice for all Texans by working to give a voice to individuals and groups that are otherwise overlooked in the legal process. Texas Appleseed has worked on some of the state's most pressing problems. Our work to improve the rights of poor people in the criminal justice system alerted us to the special needs of juvenile defendants and their families. We hope this handbook will help juveniles and their families more easily navigate the criminal justice system.

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# About This Handbook

The juvenile justice system is complicated and can seem overwhelming. This handbook is designed to give some basic information to youths as well as parents*, grandparents, foster parents, guardians, and other family members or friends of children who have been or may be in trouble with the law. This handbook is written to defendants in juvenile court, but with special tips for parents throughout the text and also a special section just for parental issues, *Special Issues for Families of Juveniles*. It is very important for parents and guardians to understand the information. Parents are extremely involved in the juvenile system, and their knowledge and advocacy on behalf of their children can make a big difference in the outcome of the case.

A little information can go a long way, and you should know as much as you can about your own (or your child's) situation and what you can do about it.

Adolescence is a period of dramatic mental, emotional, physical, and social development. You should know that you will be charged in the juvenile system for acts you commit from the age of 10 until you turn 17. Under certain circumstances, someone as young as 14 can be transferred to adult court and treated as an adult. The law often demands severe punishment for juvenile offenders. A person sentenced in juvenile court can be held for up to 40 years in the most extreme circumstances, under what's called "determinate sentencing." (See *What Can Happen to You* for more information on determinate sentencing.)

We hope this handbook will help you and your family grow more aware of your rights in the Texas juvenile justice system, as well as your options if you are in trouble with the law. This handbook contains basic information to get you started—it does not include everything you could or even should know about the Texas juvenile justice system. This handbook is available for free on our websites at www.appleseeds.net/tx and www.lawlib.uh.edu/juveniledefender. Ultimately, we hope it will assist you or your family member in getting the best results while working with an attorney to resolve the case, staying out of trouble, and getting the help needed to address problems at home or at school.

* Sometimes in this handbook we refer just to parents. All references to parents in this handbook are intended to include any and all legal guardians.

# What You Can Do To Help Yourself

### I JUST WANT THIS TO BE OVER. WHAT SHOULD I DO?

Even though the judge or jury will decide what will happen to you, you can take steps to make sure that your case ends in the best possible way.

- Get a lawyer as soon as possible. The court will generally require that you get a lawyer.
- Listen carefully to your lawyer's advice and try to help him or her in defending you. You will be more likely to win your case, go home, and/or receive a lighter sentence if you do that.
- Make an effort to behave yourself at all times. The more you are polite and well-behaved, the harder it will be for prosecutors or probation officers to describe you as a "troublemaker" or "bad kid" who needs to be locked up.
- Read this handbook. It will provide you with important information on how to have this serious situation resolved as soon as possible.

**Parents**

Getting a lawyer for your child should be your first priority when you find out your child has been arrested.

# Police, Arrest, and Interrogation

The first people you speak with if you get arrested or questioned are police officers. These are the people who investigate offenses and make arrests. Police have many different duties and goals. In many situations, they are there to help, but if you are accused of committing a crime, they are not there to help you. They will be trying to prove that you did it.

Do not believe everything the police say. Police are legally allowed to lie to you, except in court. You should always be cautious about what police tell you because they may be lying to try to make you confess. We will explain more about why police can lie and how they can lie later in this section.

### WHAT DO I DO IF I GET ARRESTED? WHAT ARE MY RIGHTS?

- Be polite and keep your cool.
- You have the right to remain silent at all times upon being arrested. You should truthfully provide basic identifying information, but do not talk about anything else to police officers, probation officers, prosecutors, or anyone else. It is really true that anything you say can and will be used against you. Tell the police your name and date of birth and say you want a lawyer.
- If you are detained, do not talk to other detainees about anything related to why you have been arrested. If you tell something to another kid in detention, the police or prosecutor may ask him or her to tell on you in exchange for a reduced sentence for them!
- You have a right to a lawyer, so ask for a lawyer to help you. Say, "I will not answer any questions until I speak with a lawyer" or "I want a lawyer." Do not ask if you should get a lawyer, just demand a lawyer. The law states that the police have to provide you with a lawyer if you have requested one. After you have made this request, the police are required to stop asking you questions. If they continue to ask questions, continue to demand a lawyer.

- You should make sure your parents know you have been arrested. The police must, by law, contact your parents after you have been arrested.

- You should never sign a confession or any written statement or give a spoken confession without talking to a lawyer first. You do not have to sign anything. If you do not understand something, do not sign it. If you do not want to sign something, do not sign it.

- You can ask to be moved if you are in danger. You have the right to request protection or a secure room if you feel threatened by other detainees (prisoners). Do not hesitate to let the guards know if you are in danger.

- You have a right to know the charges against you and the status of your case. The police cannot hold you in detention for more than two working days (one working day for a status offense) if they have not brought any charges against you or taken you for a hearing.

- You should not answer any questions from anyone if you are hungry, worn out, or sleepy. And remember, never answer any questions about the case without your lawyer being there or saying it is okay to do so.

- If you are not an American citizen (you are from a foreign country) but you are a legal resident, the police or courts may not legally send you or your family back to your country just because you have committed a crime. Under international law, you also have the right to notify your country's embassy or consulate (your country's official building in America) so you can ask for help. If your case is handled under the juvenile system, you cannot be sent back to your country because of your case.

**I'VE HEARD ABOUT MY MIRANDA RIGHTS. WHAT ARE THOSE?**

Miranda warnings are what the police say on television and in movies. "You have the right to remain silent, if you choose to waive this right anything you say can and will be used against you in a court of law," etc. In Texas, juveniles often are not read Miranda warnings by the police. Instead, a magistrate, a special type of judge, must give these warnings to juveniles. These warnings must be given outside the presence of the arresting or interrogating police officers. An interrogating officer is any officer who asks you questions about your case. When you are taken before the magistrate, you should immediately tell him or her that you want a lawyer.

**WHAT SHOULD I KNOW ABOUT POLICE INTERROGATIONS AND CONFESSIONS?**

- An interrogation is when anyone other than your lawyer, police officer or not, asks you questions about your case.

- A confession can be anything you say in an interrogation.

- The goal of an interrogation is to obtain a confession from you if are suspected of having broken the law.

- Do not assume that the police will let you go home if you tell them what they want to hear. Whatever you say at any time may be used by a prosecutor to get you in serious trouble in court.

- Sometimes the police try to obtain a confession by trying to trick you using flattery or sympathy. They might say something like, "I really feel sorry for you. If I had the same problems of course I would have done it too. Anybody would have done it. Just tell me what happened and you can get out of here." Just because a police officer seems friendly to you, or gives you a coke or hamburger, that doesn't mean he or she really wants to help you or cares about you. Other officers may not be nice at all and may try to bully you into making a confession. Sometimes the police try to wear you down with a mean police officer and then put you in a room with a nice police officer hoping you will think the nice officer is your friend and talk to him or her.

- The police have the right to lie to you and present you with fake evidence in order to get your confession (e.g., say they have your fingerprints, claim your friends or other witnesses spoke against you). For example, they might say something like, "We have your fingerprints that show you did it. We have witnesses signing statements right now. If you don't talk you're just getting yourself in more trouble than you're already in."

- Be aware that if you confess now it could be very bad for your case later. Don't say you are guilty in order to get out of the interrogation, even if it is taking a long time and you want to go home.

## WHY YOU NEED A LAWYER

### DO I NEED A LAWYER?

Yes, you need a lawyer. Even if you are guilty and you want to plead guilty, a lawyer will help you get the best deal possible. A lawyer can tell you what should happen next in your case and what your choices are. Even if you think you know what the situation is, a lawyer may know about parts of the law that can help you more or prevent further problems later on.

### WHAT IS A LAWYER AND WHAT KIND OF LAWYER DO I NEED FOR MY JUVENILE CASE?

A lawyer is someone who has graduated from law school and passed a special exam, called a bar exam, to get his or her license to practice law. You need a lawyer licensed in Texas to represent you in Texas. There are many different kinds of lawyers, and you should look for one that knows juvenile law. If the lawyer does not know much about juvenile law, then he or she will not be able to help you as well.

You should know that a new state law called the Texas Fair Defense Act requires that your county (and every other Texas county) must set specific requirements an attorney has to meet in order to practice juvenile law in your county.

**Parents**

If you feel that your child's attorney is not qualified to handle your child's case, you may want to find out if the attorney meets the county's qualifications. You can contact the Texas Task Force on Indigent Defense by email at FairDefense@courts.state.tx.us or at (512) 936-6994 to find out what the qualifications for handling juvenile cases are in your county. If you feel that these qualifications are not demanding enough, you should let your local county officials and your state legislative representatives know. If your child is transferred to the adult system, you will want to find out more about the other aspects of this law. You can get more information about the Fair Defense Act at the Texas Appleseed Website, http://www.appleseeds.net/tx.

### WHAT IS MY LAWYER'S JOB?

- Your lawyer must strongly represent your interests and defend you to the best of his or her ability. S/he should treat you with attention and respect, no matter who you are or what you are accused of doing.
- After you have been arrested, your lawyer should try to have you released, so you can go home until the day of your hearing or trial.
- During your hearing or trial your lawyer should try to get you the best outcome possible.
- Your lawyer should stay in touch with you, and give loyal and individual attention to your case.
- Both you and your lawyer are responsible for making decisions about your case. Some decisions are yours alone (such as whether to plead and whether to testify), but your lawyer's advice will be important as you make these decisions.
- Your lawyer must keep you informed about the case all the way through and explain all the options to you so you can make your decisions wisely.
- Your lawyer does not do the same job as your probation officer, caseworker (social worker), doctor, or as a police officer or prosecutor.

## WHAT IF MY FAMILY CANNOT AFFORD A LAWYER?

If your family cannot afford a lawyer, the court is required by law to provide you with one and to pay for it in most cases. Many, many people–well over half of those who appear in court in Texas–need a court-appointed lawyer. You should not assume that a court-appointed lawyer will not be as good as a lawyer whom you hire.

## DOES A LAWYER REPRESENT ME OR MY PARENTS TOO?

The lawyer represents you, even if your parents are the ones paying the lawyer. That means you're responsible for your decisions. Even if you and your parents don't agree, your lawyer will follow your decision.

## IS EVERYTHING I TELL MY LAWYER GOING TO BE KEPT PRIVATE?

Your private conversations with your lawyer are almost always confidential, regardless of whether your lawyer is court-appointed or hired. This means that, except in rare situations, s/he cannot repeat anything you say to anyone–including your parents, prosecutors, employers, friends, or family members–unless you say it's okay. If you are concerned about this issue, you should ask your lawyer to explain further.

### Parents

Unfortunately, in many Texas counties it is impossible to say with certainty who qualifies financially for a court-appointed lawyer. Each judge in the past made his or her own decisions about who qualifies for getting a free lawyer. However, the new Fair Defense Act requires each county to adopt and publish guidelines to determine who qualifies for a court-appointed lawyer. These guidelines must take into account your income, source of income, assets, property, debts, necessary expenses, the number and ages of any dependents, and any income of your spouse that is available to you.

If possible, bring to your child's first court date proof of your income (like a pay stub), any payments or debts you have (such as child support, loans, or other debt), records of any disabilities you have that might keep you from working, a copy of your most recent tax return, and the names and price quotes of several lawyers. Be sure to tell the judge if you receive food stamps, any type of government payment, disability benefits, or other assistance. Make sure that you are accurate, but think carefully and be sure to report all of your expenses. If you have unusually high expenses, such as medical bills or educational costs, be sure to highlight that to the judge. Be polite and courteous to the judge or other person taking the financial information from you. Do not go into the details of your child's case with the judge or anyone else while discussing your need for a lawyer. If you can prove you are unable to work or hire your own lawyer, the judge will probably appoint one for you.

In addition to the duty of confidentiality, there is attorney-client privilege. Attorney-client privilege means that a lawyer cannot be forced to testify in court about things discussed in private with a client (you).

Attorney-client privilege is waived (given up) if other people are in the room when the attorney and client are discussing matters. If anyone else is with you and your lawyer, even your parents, you cannot expect privacy. Your parents and other people you talk to can be forced to testify against you. Remember, you should not talk to anyone about your case except your lawyer, unless your lawyer says it is okay to talk to others.

## WHAT SHOULD I TELL MY LAWYER?

Your lawyer's job is to help you, not judge you. You should answer his or her questions and be as honest as possible with him or her about your life, and about the events surrounding your arrest. The better s/he knows you and your case, the better s/he will be able to help you. S/he is the only person you can freely speak to without worrying about what you say being used against you in court. Information about problems at home, at school, or with the police can help your lawyer represent you. Also, talk with your lawyer about drug or alcohol use, because this can definitely have an impact on your case.

Always tell your lawyer if you do not understand what s/he is telling you, or if you do not understand what is happening in your case. Don't be afraid to ask questions. No questions are "stupid." It is very smart to ask questions when you don't understand something.

Remember that your lawyer cannot help you if you keep things from her or him, and your conversations with your lawyer are confidential. Remember also that the prosecutor will be gathering information about you and the case. It will be bad for you if your lawyer is surprised in court by the prosecutor bringing up facts that your lawyer should have heard from you.

*Mental or Medical Problems:* Unfortunately, many people want to hide the fact that they have mental health problems or have received treatment because they are embarrassed or think people will look down on them. But you should know that you are not alone. The best thing you can do is try to address these issues early in your life instead of waiting or trying to handle them yourself.

Hiding this information from your lawyer can be very bad for you. For your lawyer to do a good job, s/he must look at all aspects of your life. Your lawyer may even be able to work out a dismissal or other favorable result because there is a mental health issue in the case.

So it is best to tell your lawyer about your mental illness, your past and current diagnoses, and where you receive treatment, including any medicine you have taken or are taking now. You should also tell your lawyer if you can't remember the details about some events or if you are confused about when things happened. If you have had problems with any medications, you should tell your lawyer about that too. You should also tell your lawyer the names of doctors, caseworkers, or agencies that work with you. You should allow the lawyer to have copies of your medical records if this will help the lawyer represent you. The lawyer and you can then discuss whether or not to share this with the judge or jury. It may not be important to your case or have any effect on it, but it might help your case a lot. The lawyer is the best judge of this. If you are not getting your medication in detention, be sure to tell your lawyer about that.

**WHAT IF I DO NOT LIKE OR TRUST MY LAWYER?**

If your parents hired the lawyer, talk with them about hiring a new lawyer. If the lawyer was appointed by the court, there is not much you can do. A judge may be willing to remove a lawyer if you can prove they are doing a bad job, but this rarely happens.

**IF I AM NOT DETAINED, WILL THE COURT STILL PROVIDE A FREE LAWYER FOR ME?**

Yes. The court looks to see if you or your family can afford a lawyer, not whether you are detained.

**CAN I CHOOSE MY LAWYER?**

You and your family can choose a lawyer if your family is paying for the lawyer. If the court is appointing you a lawyer, then you cannot choose your lawyer. However, an appointed lawyer should be qualified and reasonably paid.

## *PARENTS: HOW DO YOU GET A LAWYER?*

You are required to hire an attorney for your child. If you cannot afford to hire an attorney, the court is required to appoint an attorney for your child at no cost to you.

You can ask lawyers you know, friends, and relatives for the name of a lawyer to represent your child. Some communities have a lawyer referral service, or you can call the local bar (legal) association for a referral. Lawyers are usually recommended according to their experience and the type and seriousness of the criminal charge.

You should interview a lawyer before you hire one. In fact, you may want to speak to at least two lawyers so you can compare. Lawyers often consult with a potential client at no charge. Ask about this when you call for an appointment.

Once a lawyer has agreed to take your child's case, the lawyer may want a significant part of the money "up front." However, many lawyers will work out a payment schedule with you. Be cautious with any lawyer who is not straightforward about his or her fees. The lawyer should explain the fees that you will be charged. In fact, you should get a written agreement about the fees from the lawyer. This can be a signed contract or a letter from the lawyer setting out the fee agreement. Carefully study any agreement that a lawyer asks you to sign. Never base your decision to hire a lawyer solely on fees. Hire someone with whom you feel comfortable and who will communicate well with you and your child.

You may be charged one fee for pretrial services and another fee if the case gets set for a trial. There may be additional fees if the lawyer needs to hire an investigator, copy records, or file pretrial motions.

No lawyer can guarantee a positive outcome for your child's case. Too many things can happen that are beyond a lawyer's control. In fact, it is unethical for a lawyer to guarantee any particular outcome about a case. Your child's lawyer should, however, explain all the possible outcomes of your child's case and give you his or her best guess about what might happen.

It is helpful for your child's lawyer to have experience in the local courthouses. The lawyer should also have had previous experience representing people charged with similar offenses. Some lawyers specialize in certain types of offenses. A lawyer who is "board certified" by the Texas Board of Legal Specialization has experience and training in a particular area of the law, such as criminal law. There is a special board certification in juvenile law, so if you can find a lawyer with this credential, that would be ideal.

### IF I DON'T LIKE MY JUDGE, CAN I REQUEST A NEW ONE?

No. The law almost never allows a defendant to request a different judge. But tell your lawyer about your concerns.

### WHAT DO I DO IF MY LAWYER HAS NOT COME TO SEE ME AND MY COURT DATE IS COMING UP?

If you are in detention you should expect to see your lawyer within a few days. If you are sent home while waiting for your court date, your lawyer should have a face-to-face meeting with you well before your court date. If that does not happen you should call your lawyer. If the lawyer was appointed by the court, call the court coordinator to let them know and see about getting the lawyer's phone number if you do not have it.

### MY LAWYER WANTS A DOCTOR TO SEE ME IN JAIL AND I DON'T WANT TO. DO I HAVE TO SEE THE DOCTOR?

If your lawyer or the judge has asked you to be examined by a doctor to see if you are able to participate in your trial, it probably is to your benefit to have this done. However, do not agree to talk to any doctor or be examined before you have had a lawyer appointed to represent you. This doctor works for the court and might have to report what you said to him or her in court, so do not discuss the details of your case with the doctor.

## What to Expect After Arrest and in Court

### WHAT IS DETENTION?

A juvenile detention center is a short-term holding facility that is supposed to be used to ensure a child's appearance in court or if a child poses a danger. In detention, you will be locked up with other kids. You should not be locked up with adults. How you behave in detention will affect your case, so be on good behavior.

### I AM GOING TO BE IN COURT. WHAT SHOULD I DO?

If you do not have a lawyer yet, the court will probably tell your parents to get you one. If you do have a lawyer, the lawyer will probably speak with the prosecutor and look at the files of the prosecutor and probation officer. The prosecution may offer a deal on this day.

Whenever you are in court, you should:

- Dress in neat, office-type clothing (slacks, a shirt and tie if you are a boy; a dress or slacks outfit if you are a girl). Avoid caps or any other head coverings in court (except if they are part of religious observance), and avoid a lot of makeup or jewelry. Avoid gang colors.
- Be respectful to court personnel (the people who work there and the lawyers around the courtroom) and the judge.
- Listen carefully: Even though court hours can be long and boring, you should listen very carefully to what is said in court. This is especially true if you testify because you may be asked to speak about what some other people have said about you and your case in court. Listening carefully is in your best interest – this is your case and you should know what is going on. If you don't understand something, as always, have your lawyer explain it.
- Always address the judge as "Your Honor." Address all others as "sir" and "ma'am."

**Parents** Detention is at the beginning of the process, and you may be angry or think this is not an important part of the process. You may even think your child will learn a lesson if s/he stays locked up for a little while. But detention is very serious and can hurt your child and his or her case. Don't ignore your kid in detention. This is a very difficult time, and s/he needs your support. You should know that if your child is in detention, s/he must be given a detention hearing within one working day (except on weekends). § 54.01(a).

*Speaking in court (testifying):* You do not have to testify in court, and you should never make the decision to speak in court without discussing it with your lawyer first. But if you decide to speak, make sure you understand all questions before answering them. You should speak clearly and stay calm. If you mumble, look scared or angry, and/or fidget, some people may think you are not telling the truth. You also need to speak loudly, so that the judge and other court personnel can hear you.

If you lie in court you can get in serious trouble. Whenever you testify in court, work with your lawyer beforehand so you are prepared and understand what will be happening.

If you are going to plead guilty, then you may have to come to court and talk to the judge about the crime. The judge will ask you questions to make sure that you committed the crime, understand the charges, and understand the plea. In some cases, you sign a plea agreement and then the judge asks you questions to make sure that you understand it.

*Missing School:* If you have to miss school to attend court, the court will generally write an excused absence slip for you. Ask the court coordinator or bailiff to see who can write that for you.

**WILL I GET A CHANCE TO TELL MY SIDE OF THE STORY TO THE JUDGE OR JURY?**

You have the right to decide if you want to testify or not. Discuss this with your lawyer. S/he will be able to tell you if it is in your best interest to tell your side of the story. Even though you may want to help the judge and/or jury understand what happened to you, sometimes it may make things worse for you and your case. Remember that your lawyer will be speaking for you even if you don't testify. If you do not testify, the U.S. Constitution states that the judge or jury cannot count that against you when deciding on your case.

**WHAT HAPPENS IF I PLEA BARGAIN?**

Most juvenile cases are handled not by trial, but as the result of an agreement or "plea bargain." If you and your lawyer have decided it is in your best interest to make a plea agreement, your lawyer will then bargain with the prosecutor to try to get you the best deal possible.

Your lawyer should slowly and carefully review with you all the options being discussed. If you have questions or do not completely understand the different choices that your lawyer is discussing with you, you should tell him or her right away. Do not be embarrassed about telling him or her that you don't understand what s/he is saying. Of course you are not an expert in the law, and it is your lawyer's job to explain things to you. This is important, because if you accept the deal, it is very hard to change it later.

There is a special type of deal called deferred prosecution. If you do this, you are put on probation, usually for six months, and if you complete it there is no record of an adjudication (conviction). This is one of the best deals an attorney can get for you, but it is not always what you should do and you cannot always get this deal.

Another special deal is what is called the first offender program. If you qualify for this program, you can be placed on a special type of probation for three to six months and if you successfully complete the probation the charges are dismissed.

**MY LAWYER HAS MADE A DEAL OR BARGAIN WITH THE PROSECUTOR ABOUT MY CASE. CAN I TRUST THIS?**

Yes, you can trust that you will get what you bargained for, although a judge can refuse to accept the bargain. If that happens, you may withdraw that plea and start again.

**WHAT IF MY LAWYER WANTS ME TO PLEAD GUILTY AND I DON'T WANT TO?**

Do not. You do not have to. You should tell your lawyer if you do not want to plead guilty. S/he should then fully advise you about your rights and be honest with you about how s/he thinks your case will end up. The two of you should discuss all the options about what to do. In the end, remember that whether or not to plead guilty is your decision, not your lawyer's decision.

### WHAT ARE THE TYPICAL COURT PROCEEDINGS I SHOULD KNOW ABOUT?

**Detention Hearings**
If you are detained (kept) at a juvenile detention center, you must have a hearing within one working day of your being detained or on the first business day if you were detained on a weekend. § 54.01(a). Business days are Monday through Friday, except holidays. If you continue to be detained after your first detention hearing, you must get a hearing every 10 working days to see whether or not they can continue to detain you.

**First Appearance**
What generally happens during your first appearance depends on whether you have an attorney or not. If you do not have an attorney, the court will advise your parents to get an attorney for you and will give you a certain amount of time to get an attorney. If you do have an attorney, your attorney will talk to the prosecutor and look through the prosecutor's and probation officer's files. Your attorney may discuss a deal at that time and the case may get reset (rescheduled).

**Transfer Hearing**
If the prosecution wants to try to transfer you to adult court, there has to be a hearing. The hearing must show that it is likely that you committed the offense and that you meet the legal requirements for transfer. You may not be transferred if you are under 14 or if you are accused of committing a misdemeanor. If a transfer issue comes up, talk to your lawyer about it.

**Competency Hearing**
If you have a history of mental illness or mental retardation, or if the court orders it, there may be a hearing to determine if you are able to understand what is happening in your case and to help in your own defense. Make sure to disclose any history of mental illness to your lawyer.

**Adjudication Hearing**
This is where (in a case where you are pleading not guilty) the judge or jury decides if you are found guilty of the offense with which you have been charged.

**Disposition Hearing**
This is where the judge will decide what will happen to you. It can be compared to the punishment phase of an adult criminal trial. See the next section, *What Can Happen to You*, for an explanation of the possible outcomes.

**Parents** It would be very helpful if you could gather and bring any medical and mental health records to your child's hearing or to your lawyer's office before the hearing.

**Appeal**
An appeal is the legal process by which a juvenile takes his/her case to a higher court to review the outcome. If you enter into a plea bargain agreement, it is very difficult to appeal. Be sure you want to go through with the offer before you take the plea.

## WHAT CAN HAPPEN TO YOU

### WHAT CAN I GET IN TROUBLE FOR IN TEXAS?

Breaking the law, of course. But this is more complicated than you may think because there are many laws that people don't know about. You are responsible for following laws, even if you do not know about them. You can get in trouble if:

- You are caught with friends who are breaking the law even if you didn't do anything. You can get arrested if you are with people who are drinking, using drugs, carrying weapons, etc.

- You drink when you are under age.
- You drive when you are under age.
- Your girlfriend or boyfriend is more than three years younger than you and you are having sex with him or her.

**WHAT IS A WARNING?**

If you get one, you are lucky. In some cases, you can get just a warning and you will not be prosecuted further. But you may be required to go to a non-law-enforcement agency for some treatment or services. If that happens, take it seriously. Your luck may not last.

***Parents*** Make sure you and anyone willing to appear in support of your child come to court, dress nicely, be attentive, take an interest, and show that you care. Your loved one needs support and it will help the case to have supportive, caring people there for him or her.

**WHAT ARE INFORMAL DISPOSITIONS?**

The probation office, for certain offenses, can require you to do certain things without having to go to court. This can only happen if you are a first offender. This is a very good result for you if you can get it. Again, take any requirements seriously to avoid more trouble.

**WHAT IS PROBATION?**

Probation is almost anything the juvenile court wants it to be. It almost always will include community service, restitution (where you pay the person you injured for their loss), and curfew. It can also include different kinds of counseling, drug treatment, and drug testing. In addition, your parents will be required to pay monthly fees and may be required to attend classes and/or counseling. Probation does not always mean you get to stay at home; it can include things such as boot camp and secure residential facilities. You always have to report to your probation officer. How frequently this is required depends on the case. Probation can last up until your 18th birthday.

**WHAT IS THE ROLE OF MY PROBATION OFFICER?**

The role of your probation officer is to assist you in growing into a law-abiding and mature adult who does not endanger your community by advising you, checking on your progress, and providing information to the court so that the judge can make an informed decision on your case. The probation officer is partly responsible for deciding what will happen to you before, during, and after your hearing or trial.

*Before the hearing or trial:* Your probation officer can recommend that the judge allow you to go home or that s/he send you to detention if s/he thinks you will behave dangerously, break the law, and/or not show up to court when asked. Be sure to ask your lawyer what you should talk about, and not talk about, with your probation officer.

*During the hearing or trial:* Your probation officer may testify to tell the court more about you and your case, and to give advice on what s/he thinks should happen to you.

*After the hearing or trial:* If you are put on probation, you will have to meet regularly with your probation officer. Your probation officer will advise you, check on your progress, and make sure that you have been doing what the judge asked of you. If you have not behaved yourself and have broken your probation, the probation officer will have to tell the court and you may get arrested again.

***Parents*** Make sure you get the name and number (ask for a business card) of the probation officer, as well as other people involved in your child's case.

**WHAT IS DEFERRED PROSECUTION?**

As was explained in *What Happens if I Plea Bargain?*, deferred prosecution is a special kind of plea bargaining deal under which you are put on probation, usually for six months, and if you complete your probation, there is no record of an adjudication (conviction).

### WHAT IS AN INDETERMINATE SENTENCE WITH THE TEXAS YOUTH COMMISSION (TYC)?

This is the most serious placement you can get without special hearings. This is a lot like prison is for adults. You are taken out of your home and placed in TYC. You may be held up until your 21st birthday. The earliest anyone can get out is after nine months. Some offenses have specific time frames. A judge does not determine how long you stay at TYC; TYC determines the length of your stay within the law.

### WHAT IS DETERMINATE SENTENCING?

This is where a judge or jury decides the specific number of years you have to spend in TYC. By the time you are 21, or earlier if TYC wants to, you may be transferred to an adult prison. The longest determinate sentence is 40 years. Parole is allowed, depending on the offense.

### WILL MY RECORDS BE AVAILABLE TO ANYONE LATER?

Records of your arrest and how your case ended up will be available to juvenile and criminal courts in other cases. For all cases but determinate sentence and habitual offender cases, you may have your records sealed.

### WHAT ARE THE RULES ON SEALING RECORDS?

There are two ways your records become sealed. The first happens automatically when you turn 21 if you haven't gotten in trouble for a while. The second is by a motion filed by your lawyer two years after you have finished all the requirements of probation or been released from TYC.

Once your records are sealed, it takes a court order to have them opened. After sealing your records, you are allowed to deny that your were ever found delinquent. Police agencies are required to say that you do not have a record if your records are sealed.

## Special Issues for Families of Juveniles

### WHAT AM I OBLIGATED TO PAY FOR? A LAWYER? SERVICES IN DETENTION? ETC.

Parents in Texas are legally responsible for their children until they turn 18. That means you are required to pay for an attorney if you can afford one (which the court decides—see *What if My Family Cannot Afford a Lawyer?*). You may also be responsible for fees to pay for services for your child and even for probation fees (including restitution) and court costs.

### I ALREADY KNOW A LAWYER. SHOULD I ASK HIM OR HER TO REPRESENT MY CHILD?

If you or one of your relatives or friends knows a lawyer, this lawyer may not always be able to really help your child. Make sure that the lawyer has experience working in juvenile delinquency cases. Juvenile law is very different from criminal or civil law, and the lawyer could get your child in serious trouble if s/he does not know much about juvenile law.

### I HAVE BEEN HAVING DIFFICULTY CONTROLLING MY CHILD. SHOULD I REPORT HIM OR HER TO THE POLICE?

No, except in the most extreme circumstances. Many people believe things about the juvenile system that are not true. The sentences are not light. In fact, in many cases, due to the nature of the juvenile system, kids will spend more time locked up for things than they would if they were adults. Many juvenile records do not get erased. If you are having problems you should talk to a lawyer to get his or her advice on how to proceed without getting your child into trouble.

## MIGHT I LOSE CUSTODY OF MY CHILD?

Yes. You may lose custody if the judge finds that you are unable to take good care of your child or children.

## CAN I GET ARRESTED TOO?

You will not be arrested simply because your child is accused of committing a crime unless you were directly involved. If you are suspected of having abused your child or having committed another crime, you may be arrested.

## WHAT SHOULD I EXPECT WHEN I VISIT MY CHILD IN DETENTION OR LOCKUP?

This may be a hard time for you and your child. Be prepared to see him or her in shackles and handcuffs, and wearing detention clothing.

Your child may also be upset because s/he is in detention. S/he may take his or her frustrations out on you. Do your best to be a caring and supportive parent no matter what happens.

Make sure to get a copy of the rules and regulations at the facility in which your child is being held. All disciplinary rules should be clear and should be applied equally to all detainees. Solitary confinement should be prohibited, although room or cell confinement may be permitted sparingly. Chemical agents and physical restraints should be used only as a last resort, and only under carefully controlled circumstances.

If your child is in a facility that is not secure (locked), your child needs to know that it is important not to run away, because that would be considered an escape and your child can get charged with that as a new offense. Non-secure facilities allow your child to wear his or her own clothing and use his or her own bathroom supplies.

If your child is in a detention facility or correctional facility (TYC), the facility has to provide education, medical treatment, mental health care, and rehabilitation. Keep track of what's going on. Visit your child. Talk to the caseworker or director and other staff. Check in to make sure all the right services are being provided to your child, and keep track of when you talk to people, who they are, and what they tell you.

Stay in touch with your child when you are not able to visit by writing and make sure your phone number is on the approved list of your child. Remind your child to be careful about any private conversations, because communications are monitored by the facility. You may not want to talk about the offense your child is charged with over the phone. In fact, you may not want to discuss the offense at all with your child. Find out the rules for what you can send and when you can get phone calls. Overall, the more contact your child has with home that is supportive, the more likely s/he will stay home after this is over and not go back to detention, TYC, or adult prison.

## WHAT HAPPENS WITH MY CHILD'S MEDICATION IF S/HE IS PLACED IN A CORRECTIONAL FACILITY?

Notify the facility's staff immediately if your child is on medication. You may, or may not, be able to bring him or her medication, depending on the rules of the facility. Your child has a right to treatment while s/he is incarcerated in any facility. This does not necessarily mean that your child will get state-of-the-art care or all of the services s/he needs. But it does mean that the facility must provide your child reasonable access to medical personnel who are qualified to diagnose and treat illness and reasonable access to medicine. The facility cannot use a lack of staffing or resources as an excuse not to provide treatment.

## WHAT CAN I DO TO MAKE SURE MY CHILD'S NEEDS ARE MET BEFORE AND/OR AFTER HIS OR HER CASE HAS BEEN DECIDED?

You should ensure that your child receives the services the court ordered by talking to staff members in the facility where s/he has been placed. Also, ask your child about his or her daily program in the juvenile facility. It is very important that you do that because sometimes juveniles may not receive the services the court ordered for them.

Keep track of your child's progress by keeping in close contact with your child's probation officer and caseworker, as well as other staff members in the placement. Be certain to ask them to stay in touch with you and contact you if something happens. You should also work with them on your child's aftercare plan (the services s/he should receive following his or her release), and be sure that a plan has been made at least a month before the release date.

## IF I KNOW SOMETHING ABOUT MY CHILD'S CASE, WHOM SHOULD I TELL?

Discussing your child's case with him or her could put you in a very uncomfortable position. Texas does not regard conversations between parents and their children as confidential. You might be called to testify at the trial either for or against your child. If your family member wants to discuss the case with you, you may want to tell him or her to talk with the lawyer first. A police officer or prosecutor may call you about your child's case. You do not have to talk to them. If you are called to testify, you should avoid talking about your child's case with other witnesses and avoid contact with jurors or potential jurors. If you know something about your child's case that could help (for example, his or her mental health history or his or her mental state at the time of the alleged offense), you should talk with your child's lawyer.

## MY CHILD'S LAWYER WILL NOT RETURN MY CALLS. WHAT CAN I DO?

Try to establish open lines of communication with the lawyer from the beginning, before any court appearances. Most lawyers will try to keep up communications with you. However, there are times when the lawyer cannot communicate with you because your child has requested him or her not to speak with you. Remember, in the end, the lawyer represents your child, not you. If the lawyer consistently does not return your calls, try sending a letter to the lawyer outlining your attempts to contact him or her and describing what information you need or what you would like the lawyer to know about your child or the case.

**Minimum Lengths of Stay in TYC on Indeterminate Sentences**

| Type of Offense | Minimum Stay |
|---|---|
| Type A Violent Offender[1] | 24 months |
| Type B Violent Offender[2] | 12 months |
| Chronic Serious Offender[3] | 12 months |
| Controlled Substance Dealer[4] | 12 months |
| Firearms Offender[5] | 12 months |
| General Offender[6] | 9 months |

1. Murder, capital murder, sexual assault, and aggravated sexual assault; this also includes inchoate offenses (e.g., attempts).
2. Manslaughter, criminally negligent homicide, felony unlawful restraint, kidnapping, aggravated kidnapping, felony assault, indecency with a child, aggravated assault, injury to child, elderly, or disabled individual, felony deadly conduct, felony terroristic threat, felony aiding suicide, tampering with consumer product, arson, robbery, aggravated robbery, burglary with intent to commit a violent offense, intoxication assault, intoxication manslaughter, and certain acts against TYC personnel.
3. Offense is a felony and youth has been adjudicated on two prior felonies; the felonies must be on separate dates.
4. Offense is a felony grade manufacture or delivery offense in the Texas Controlled Substances Act.
5. Court found that the youth used a firearm during the offense; cannot be given this designation for use by co-actor or co-conspirator.
6. Any offense not listed in the previous notes.

## WHAT DO I DO IF I BELIEVE MY CHILD'S LAWYER IS NOT REPRESENTING HIM OR HER WELL?

First, talk to the lawyer and tell him or her about your concerns. Be very specific. For example, you may believe s/he has not followed up on leads, or you may believe that s/he has ignored evidence. You may feel the lawyer is too busy to fully represent your child or that the lawyer has requested too many delays in your child's case because s/he is not prepared. You may feel that the lawyer is not explaining all the options to your child.

If you are paying for the lawyer, you can fire him or her, and hire a new lawyer. This, of course, will delay your child's case. If the lawyer is court-appointed, you and your child can try to contact the judge to get a new lawyer appointed. Be very spe-

cific with the judge about your concerns. In some cases, your child can file a grievance against the lawyer with the State Bar of Texas. However, this will not offer an immediate solution to your problem or help to get a new lawyer appointed.

**WHAT ELSE SHOULD I DO TO HELP MY CHILD'S CASE?**

You are the responsible adult and you should be informed about and involved in your child's case. Take notes and find out whatever information you can. Stay in touch with your child's lawyer until disposition, and the probation officer after disposition, and help them get information they need. Be organized and keep everything related to the case in a convenient place. try to be patient with and supportive of your child every step of the way.

# Common Terms and Phrases

**Identify the person**
Point to the person.

**Do you recognize this person?**
Have you seen this person before?

**Do you understand the charges brought against you?**
Do you understand what you are being accused of?

**Do you remember what happened on this date?**
Do you remember what happened on this day?

**Do you understand why you are in court?**
Do you understand why you are here to see the judge?

**Hearing**
A hearing is like a trial for juveniles. Also it can be when you go before the judge so s/he can make a decision about something related to your case without the help of a jury. It does not always take place in a courtroom.

**Plead a case (plea or plea bargaining)**
Admit guilt of an offense without a trial in exchange for an agreed punishment recommendation by the prosecutor to the court (does not mean the sentence will match the recommendation).

**The juvenile has been adjudicated delinquent**
The juvenile has been convicted (found guilty).

**The juvenile has been adjudicated not delinquent**
The juvenile has been found not guilty and is free to go home.

**Right**
A right is a freedom that is given to you by law. You should know your rights in order to be able to use them. For example, if the police tell you that "you have the right to remain silent," you can decide not to answer questions or you can also choose to talk if you really want to. You cannot get in trouble for deciding to use your rights.

**Case**
A case is what they call your charges in court. Your case is the way the government brings a charge against you in court.

**Counsel**
A counsel is a lawyer or a person who gives legal advice.

**Prosecutor**
Prosecutors are lawyers hired by the state to make a case against you in court if you are accused of breaking the law. A prosecutor can also be called District Attorney, D.A., County Attorney, or State Attorney.

**Witness**
Someone who saw or heard something.

**Disposition**
Disposition is the result of your case. If you are found guilty, it can be any of the following or a combination of several: a sentence to serve time in a secure facility, treatment, fines, community service, etc. The judge decides what will happen to you if you have been found guilty.

**Interrogation**
An interrogation happens whenever and wherever the police (or in some cases prosecutors) ask you questions. Even if the police seem friendly with you it can be considered an interrogation.

**Confession**
You are making a confession when you tell the police what happened. People will usually say you have made a confession when you admit to doing something wrong, but anything that you tell the police can be considered a confession, even if it's a story in which you are innocent, so be careful what you say.

**Petition**
A written accusation of wrongdoing by the prosecution. Or, put another way, the charge against you. You must be given a copy of this.

**Child in need of services, also called a CINS**

A child in need of services is a child who has been found guilty of a status offense.

**Status offense and status offender**

A status offense happens when a minor (someone younger than 18) does something he or she is too young to do, such as deciding not to go to school (truancy), or staying out all night (curfew violation), or running away. A status offense is not as serious as a crime but a person can get in trouble for it.

# Resources for More Information

• Texas Department of Mental Health and Mental Retardation
http://www.mhmr.state.tx.us/ This site offers helpful information and lists local mental health or mental retardation authorities by city at http://www.mhmr.state.tx.us/CentralOffice/PublicInformationOffice/DirectoryOfServicesWHAT.html
(512) 454-3761

• Your County's Web Site
For example, if you live in Fort Bend County, it is: http://www.co.fort-bend.tx.us

• National Juvenile Defender Center
http://www.abanet.org/crimjust/juvjus/jdc.html
(202) 662-1501

• Building Blocks for Youth
http://www.buildingblocksforyouth.org

• Texas Bar Juvenile Law Section
http://www.juvenilelaw.org
(512) 463-1463

• Texas Juvenile Probation Commission
http://www.tjpc.state.tx.us
(512) 424-6700

• A wonderful handbook is available from the Juvenile Justice Project of Louisiana (it is not specifically made for Texas like this one, but it is very informative). It is available on the Web at http://www.jjpl.org/PDF/Family_Advocacy_Handbook3.pdf

• Local bar organizations that might have referral services

• Church leaders

• Local defender groups

**Texas Appleseed**
512 E. Riverside Drive, #212
Austin, Texas 78704
tel: (512) 804-1633
fax: (512) 804-1634
web site: www.appleseeds.net/tx
email: texas@appleseeds.net

Texas Appleseed is a non-profit public interest law organization that works on systemic reform efforts primarily in the areas of justice and poverty.

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